

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20541

In re Application of)	MM Docket No. 86-440
)	
Achernar Broadcasting Company)	File No. BPCT-860410KP
)	
and)	
)	
Lindsay Television, Inc.)	File No. BPCT-860410KQ
)	
For Construction Permit for a new)	
Television Station, Channel 64,)	
Charlottesville, Virginia)	

To: The Commission

**OPPOSITION OF SHENANDOAH VALLEY EDUCATIONAL TELEVISION CORP.
TO JOINT PETITION FOR APPROVAL OF SETTLEMENT AGREEMENT,
FOR LEAVE TO AMEND APPLICATION
AND FOR IMMEDIATE GRANT OF CONSTRUCTION PERMIT**

On June 24, 1998, the above-referenced applicants, Achernar Broadcasting Company and Lindsay Television, Inc., ("the applicants") filed a document styled as a Supplement to Joint Petition for Approval of Settlement Agreement, for Leave to Amend Application, and for Immediate Grant of Construction Permit. The applicants' Supplement consists essentially of a major change amendment to their application for a construction permit that for the first time proposes operation on channel 19 in Charlottesville, Virginia, instead of on channel 64 in Charlottesville as the applicants apparently had consistently proposed for some years. Shenandoah Educational Television Corporation ("Shenandoah") intends to oppose that major change amendment in the timeframe set forth by a public notice (not yet released). Therefore, Shenandoah hereby submits this Opposition to the applicants' Petition for approval of

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their settlement agreement, which appears to be contingent upon the outcome of the applicants' request to use channel 19 rather than channel 64 in Charlottesville. Shenandoah further opposes the applicants' request for immediate grant of a construction permit. Shenandoah is not opposed in principle to settlement of the comparative proceeding involving the applicants, but Shenandoah is opposed to the applicants' proposal to use channel 19 in Charlottesville.

BACKGROUND

Shenandoah has an important stake in this proceeding because it operates a translator station, W19BB, on channel 19 in Charlottesville, Virginia (Albemarle County), and the applicants' proposal to use channel 19 in Charlottesville would destroy Shenandoah's ability to provide its educational programming via its channel 19 translator to viewers in Charlottesville and in greater Albemarle County. This translator is vital to Shenandoah's continuing ability to meet its educational and noncommercial mission because of the mountainous terrain that characterizes its coverage area. Moreover, loss of the W19BB service area would threaten Shenandoah's financial capacity to maintain the quality of educational programming it presently provides to other communities it serves. Shenandoah's station WVPT(TV) is the smallest public television station in Virginia in terms of both budget and staff, and reaching the Charlottesville/Albemarle community is essential to its fundraising efforts. For example, a significant portion of the station's member contributions come from viewers residing in the Charlottesville/Albemarle area. Losing access to that area would cause Shenandoah severe economic harm.

The importance to Shenandoah of its channel 19 translator is demonstrated by the fact that Shenandoah went to great lengths to obtain a change of its DTV assignment from

channel 19 (the channel that the applicants now seek to use) to channel 11 in order to protect its translator. The Commission granted that change in its *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, MM Docket No. 87-268 (1998) at ¶ 298.

ARGUMENTS

Shenandoah opposes the applicants' proposed major change amendment, and will explain fully the reasons supporting its opposition in the appropriate timeframe following public notice of the proposed amendment. In order to make clear at the present time why Shenandoah opposes the applicants' Petition for approval of their settlement agreement, which appears to be contingent upon the major change amendment, Shenandoah provides the following summary of at least some of the reasons supporting its opposition to the applicants' proposed amendment:

1. The applicants are precluded from requesting use of channel 19 by means of a major change amendment because that channel is not allocated to Charlottesville, Virginia in the analog table of allotments (47 C.F.R. § 73.607). If the applicants wish to seek use of channel 19 in Charlottesville they must submit to the Commission a petition for rulemaking to amend the table of allotments. Doing so would enable all interested parties to comment and, if the Commission decided to allocate channel 19 to Charlottesville, potentially to compete for that channel. Instead, the applicants' proposed major change amendment appears to represent an attempt to circumvent the process established by the Commission's Rules without providing any justification for doing so.

2. As stated above, the applicants' proposed major change amendment violates Section 73.607 of the Commission's Rules on its face. For this reason alone, the applicants' assertion that their proposed major change amendment does not raise additional

issues and that it therefore satisfies the good cause showing required by Section 73.3522(b) of the Rules for post-designation amendments is incorrect. Because the applicants' request to operate on channel 19 raises issues implicated by the violation of § 73.607, as well as other issues including those summarized below, the applicants have not met the heightened good cause standard for changes to an engineering proposal that § 73.3522(b) requires.

3. The applicants' use of channel 19 in Charlottesville would violate the DTV-to-NTSC distance separation requirements for co-channel VHF stations in Zone 1 set forth in Section 73.623(d) of the Rules because it would create a short-spacing to DTV channel 19 in Portsmouth, Virginia (WGNT). The applicants purport that, with respect to WGNT, their proposed amendment would satisfy the applicable interference standards. However, their interference showing does not appear to comply with the required methodology, and in any event an interference showing is not sufficient by itself to overcome a violation of the spacing requirements. The applicants have not made a showing of any compelling circumstances that might justify abrogation of the spacing requirements. Moreover, the applicants assert that where the minimum distance separations are not met, Section 73.623(c) of the Rules sets forth the standards for determining that there will be no interference, and they assert that their proposal satisfies those standards, but that provision of the Rules does not apply where, as here, an applicant is requesting permission to construct a new NTSC rather than DTV station.

4. The applicants' request to use channel 19 constitutes a major change amendment to their application for a new station, and should in the circumstances be treated as a new application to construct an NTSC station. Consequently, the Commission's determination in the DTV proceedings¹ that no applications for new NTSC stations may be filed after

¹ *Sixth Further Notice of Proposed Rulemaking*, MM Docket No. 87-268, 11 FCC Rcd 10968 (1996).

September 20, 1996 should be applied here, and the applicants' proposed amendment should be deemed time-barred.

5. The Commission granted Shenandoah's request to change its DTV assignment from channel 19 to channel 11 specifically for the purpose of protecting its channel 19 translator. In the interests of equity under the special circumstances present here, as well as in recognition of the public's interest in Shenandoah's continuing ability to provide quality educational programming, the Commission should consider the importance of this translator in making any determinations that may imperil it.²

Because Shenandoah opposes the applicants' proposed major change amendment, Shenandoah at this time opposes approval of the applicants' settlement agreement, insofar as it is contingent on the Commission's grant of the applications, as amended, to use channel 19 in Charlottesville. For the same reasons, Shenandoah also opposes the applicants' request for immediate grant of a construction permit.

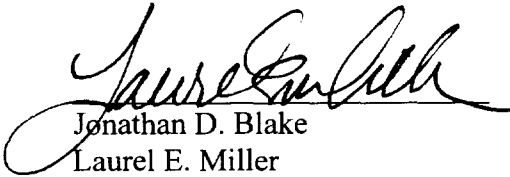
CONCLUSION

For the foregoing reasons, we respectfully request that the Commission deny at this time the applicants' request for immediate approval of their settlement agreement and grant of a construction permit. For the reasons summarized above, we also request that the Commission reject the applicants' major amendment proposing use of channel 19 rather than

² Following further review and engineering analysis of the applicants' proposed amendment, Shenandoah may present additional reasons supporting rejection of that amendment. For example, it appears that the proposed amendment may be technically flawed in certain respects, including with respect to its radiation hazard study, which appears to be incomplete.

channel 64 in Charlottesville, Virginia, and will supplement and explain those reasons more fully in the appropriate timeframe following public notice.

Respectfully submitted,



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July 9, 1998

CERTIFICATE OF SERVICE

I, Laurel E. Miller, do hereby certify that on this 9th day of July 1998 copies of the foregoing Opposition of Shenandoah Valley Educational Television Corporation to Joint Petition for Approval of Settlement Agreement, For Leave to Amend Applications and for Immediate Grant of Construction Permit were sent via hand delivery or first class mail, postage prepaid, as indicated below, to the following:

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